

LABOUR DEPARTMENT

The 5th June, 1981

No. 9(1)81-8 Lab/6301.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Haryana Distillery, Yamuna Nagar:—

BEFORE SHRI M.C. PHARDWAJ, ARBITRATOR AND PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 45 of 1980

between

THE WORKMEN AND THE MANAGEMENT OF M/S HARYANA DISTILLERY, YAMUNA NAGAR.

Present:—Shri Gian Chand for the workmen.

Shri R.L. Gupta for the management.

AWARD

In pursuance of provisions of sub-section 3 of section 10-A of the I.D. Act following dispute was referred by the parties to the arbitration of Industrial Tribunal, Haryana, Faridabad:—

- (1) Whether the workers are entitled to *ad hoc* increase of Rs 32 per month as per settlement, dated 4th August, 1979 with retrospective effect? If so, from which date?
- (2) Whether the workmen are entitled to wages for the strike period from 21st June, 1979 to 4th July, 1979?

On receipt of the arbitration, reference notices were issued to the parties, who put in their appearance and filed their pleadings. Issues under reference were put for trial on 8th September, 1980. On behalf of the workmen Shri Gian Chand, President of the Haryana Distillery Employees Union appeared as the sole witness whereas on behalf of the management appeared Shri Som Chand Gupta, Labour-cum-Conciliation Officer as M-1 and Shri K.M. Aggarwal as MW-2. Arguments were heard. I, now, give my finding issueswise:—

Issue No. 1.—W-1 stated that there was a settlement, dated 24th July, 1976 which was in force upto 31st December, 1978. On 10th November, 1979 a meeting of the union was held and resolved to serve a demand notice on the management on 12th January, 1979. The demands were not settled by the management, therefore, the workmen went on strike on 21st June, 1979. On the intervention of the Deputy Commissioner the workers started work on 5th July, 1979. The management allowed *ad hoc* increase of Rs 32 per month w.e.f. 1st July, 1979 though the workmen had demanded increase from 1st January, 1979. The workmen were forced to go on strike because the management did not redress their demands for seven months. The strike was not declared illegal by the Government. He further stated that the workmen had stated in the demand notice, dated 12th January, 1979 that in case the management did not meet their demands they will resort to any peaceful action. Copy of the demand notice was Ex. W-1. The management closed the excise gate of the Distillery and the workmen were not allowed to enter the factory on 25th June, 1979. A telegram copy Ex. W-2 was sent to the Labour Commissioner by the workers. In cross examination he stated

that there was another union named Modi Mill Mazdoor Union. There was no third union. He further stated that there were only two demand notices. He did not know if Shri Megh Singh and Uggar Sain represented some of the members of his union in the name and style of the same union. He admitted it as correct that settlement Ex. M. 1 was arrived at with the intervention of the Deputy Commissioner. It was also correct that the workers were represented by five representatives and not by the union but they belong to his union. He stated that expiry date of the settlement was given in the demand notice. No separate letter for terminating the settlement was given. He denied having resorted to violence during strike period and also that his union had no representative character. He admitted that wages were linked to the costs of living index per settlement, dated 24th July, 1976. He did not know if D.A. and increment will be according to the old settlement. He wanted that benefits of the settlement should be given from the date of expiry of the previous settlement.

MW-1 stated that he was Labour-cum-Conciliation Officer, Yamunanagar from 1st April, 1979. He received demand notice, dated 20th February, 1979 from Modi Mill Mazdoor Union. Second demand notice dated 27th December, 1979 was received from Haryana Distillery Employees Union and third dated 12th January, 1979 also from the later union. Copies are Ex. M-1 to M-3. All the three parties were called. The management had raised objections that either of the union had no representative character and secondly that the settlement, dated 10th August, 1977 was in operation and no notice for its termination was given. He found 129 workmen with Modi Workers Union, 88 workmen with Haryana Distillery Employees Union and 111 with Shri Gian Chand (Haryana Distillery Employees Union). Total employees in the company were 307. He sent failure report under section 12(4) of the I.D. Act to the Government. He further stated that there was a strike in the factory from 21st June, 1979 which was called off from 5th July, 1979 with the intervention of the Deputy Commissioner. Ex. M-3 was received by him and a settlement was arrived at on 4th August, 1979.

Settlement giving rise to the present dispute refers demand notice, dated 13th January, 1979 through Modi Mill Workers Union, demand notice, dated 28th December, 1978 and 12th January, 1979 through Haryana Distillery Employees Union. Ex. M-1 to M-3 speak of revision of wages, D.A. and many other demands. Previous settlement expired on 31st December, 1978. The main contention of the learned representative for the management that a notice of two months terminating the existing settlement was necessary. It is controverted by Shri G.C. Joshi learned representative for the workmen that there was no question of notice because according to last clause of the settlement Ex. M. 7 the date of expiry was 31st December, 1978. It was well in the knowledge of the management that the settlement was binding up to this date. The learned representative for the workmen cited 1962, I LLJ page 661 in which the Supreme Court nearly on the same facts had held as under :—

“In the circumstances, the various representations made on behalf of the workmen and the presentation of charter of demands were held sufficient to terminate the settlement. Hence absence of a formal notice under S. 19(2) of the Act terminating the settlement was held immaterial in view of subsequent representations made by the workmen and the other facts stated *supra*.”

In the present dispute on receipt of copies of demand notices conciliation proceedings were started. The management, —*vide* letter dated 26th February, 1979 Ex. M-5 informed the Labour Officer-cum-Conciliation Officer that the settlement dated 24th July, 1976 was not terminated by the union and secondly it challenged the representative character of the union and wrote that “it will be futile to discuss the matter through any of the persons for want of his genuine credentials”. On the other hand it wanted all the unions to terminate the existing settlement in the same letter. On receipt of this letter it seems the Conciliation

Officer started assessing the representative character of the three unions. I do not understand what more was wanted by the management and the Conciliation Officer when all the three unions had submitted a charter of demands and in two notices it was expressly written that the previous settlement had already expired. The management instead of giving to the negotiation table raised technical and jurisdictional objections over the demand notice and the settlement dated 4th August, 1979 was reached when the situation had become serious and the good office of the Deputy Commissioner brought the situation under control and the present settlement was arrived at. The benefits of settlement were given w.e.f. 1st July, 1979. The amount of increase is on *ad hoc* basis and no calculation exist in the settlement nor the same were detailed by the parties during their evidence. In the demand notice the workman had claimed benefits from 1st January, 1979, i.e. the day following the date of expiry of the previous settlement. Because all the three demand notices are basis of the present settlement and the latest date is 13th January, 1979 of the demand notice from Madi Mill Workers Union. Thus all the demand notices could have been discussed and negotiated upto 31st January, 1979 and in such a situation all the ordinal could have been avoided, therefore, in these circumstances, I hold that the workers are entitled to *ad hoc* increase of Rs 32 per month w.e.f. 1st February, 1979.

Issue No. 2.—In have already discussed the evidence led by the parties in the above issue. Ex. W-2 is copy of telegram from the union that the management had locked working places w.e.f. 25th Ex. M-8 to M-13, Ex M-15 and M-16 are copies of documents in which there are allegations of strike, intimidation, stoppage of work, etc. Ex. M-14 is the letter to the Secretary, Labour Department, Haryana, with a request to prohibit the strike under section 10(3) of the I.D. Act. It is an admitted fact that no action under law was taken to prohibit the continuance of strike, therefore, the contention of the learned representative for the management that from the facts of the matter it may be inferred that the strike was illegal. I am enable to accept this plea. His plea that the Conciliation Officer took a pretty long time in assessing the representative character of the three unions has also no force because it was the management who categorically asked the Conciliation Officer to verify the representative character prior to the coming of the management to the negotiation table. The representative for the workmen cited 1967 II LLJ page 201 in which it is held that section 23 was not attracted when the strike was not declared illegal. In this case the plea of the management that there was pendency of settlement and the provision of section 23(C) were applicable has no force. I, therefore, hold that the workmen are entitled to wages for the strike period from 21st June, 1979 to 4th July, 1979.

While answering the reference I give my award that the workers are entitled to *ad hoc* increase of Rs 32 per month, w.e.f., 1st February, 1979 and further the workmen are entitled to wages for the strike period from 21st June, 1979 to 4th July, 1979. I answer the arbitration reference in these terms.

M. C. BHARDWAJ,

Dated the 22nd May, 1981.

Arbitrator and Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 498, dated the 23rd May, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes, Act, 1947.

M.C. BHARDWAJ,

Arbitrator and Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.